

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-13-1-5-00259-16
45-004-16-1-5-00947-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-04-402-016.000-004
Assessment Years: 2013 & 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 20, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2016 appeal with the PTABOA. The PTABOA issued notice of its final determination on May 10, 2017. On June 26, 2017, Petitioner filed a Form 131 petition with the Board.
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on March 5, 2018. Neither the ALJ nor the Board inspected the property.
5. James Nowacki, Petitioner, was sworn and testified. Robert Metz and Joseph James, Lake County Appeal Officers, were sworn and testified for Respondent.¹

Facts

6. The subject property is a vacant residential lot located at 577 Van Buren Avenue in Gary.
7. For 2013, the assessed value was \$9,900. For 2016, the assessed value was \$8,000.

¹ Terrance Durousseau from the assessor’s office was present but was not sworn and did not testify.

8. Petitioner requested an assessed value of \$2,500 for both years.

Record

9. The official record contains the following:

- a. A digital recording of the hearing,
- b. Exhibits:

Respondent did not present any exhibits.

Petitioner Exhibit 1:	GIS map,
Petitioner Exhibit 2:	Property record card (“PRC”),
Board Exhibit A:	Form 131 petitions and attachments,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township

assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value did not change from 2012 to 2013. Petitioner, therefore, has the burden of proof for 2013. The assessed value decreased from 2015 to 2016. Petitioner, therefore, also has the burden of proof for 2016.

Objections

15. Petitioner attempted to show the condition of the subject neighborhood through the use of a Google map application on his cell phone. Mr. Metz objected unless Mr. Nowacki was prepared to submit his phone as evidence. Mr. Metz further argued that there was no way of knowing when the photo was taken or if the photo was of the subject property. Mr. Metz argued that the picture on the phone was irrelevant and that there was no way of knowing whether or not it had been altered.
16. Petitioner admitted he could not submit the Google map as evidence. The Board sustains Respondent’s objection, because the photos could not be made part of the record.

Summary of Parties’ Contentions

17. Petitioner’s case:
 - a. Petitioner contends the property is in a blighted area and that there is little or no development nearby. He contends that because of the alleged over-assessment, excessive taxation, and lack of city services, the neighborhood was first neglected and then abandoned. Now, he claims, only 40% of the homes remain in what was once a built-up area. *Nowacki testimony; Pet’r Ex. 1.*
 - b. Petitioner contends that the PRC indicates that the subject property was in the county’s inventory for fifteen years. He claims that during that fifteen year period of going through the auction process, no one had any interest in the property. Petitioner acquired the property for \$50 in 2011 which at the time, he claims, was the actual market value. *Nowacki testimony; Pet’r Ex. 2.*
 - c. Petitioner contends the property was not worth \$9,900 in 2013. In 2016, the assessor decreased the value to \$8,000, which Petitioner claims is indicative of some of the deterioration in the neighborhood but does not reflect the full extent of the decline. He contends the property should be assessed at \$2,500 even though that is still 50 times what he originally paid for the property. *Nowacki testimony; Pet’r Ex. 2.*

18. Respondent's case:

Respondent contends Petitioner has failed to present any market evidence to support his requested values. Consequently, he recommends no change in the assessments for 2013 or 2016. *James testimony*.

ANALYSIS

19. Petitioner failed to make a prima facie case for a reduction in the assessed value for either year at issue. The Board reached this decision for the following reasons:

- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
- b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 assessment date was March 1, 2013. The valuation date for the 2016 assessment date was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
- c. Petitioner purchased the property for \$50 in 2011. He did not request the property be assessed for the purchase price, but rather contends the property should be assessed at \$2,500 for both years at issue. He presented no evidence to support that value for either year. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Petitioner had the burden of proof for both 2013 and 2016 and failed to make a prima facie case for reducing the assessed value for either year.
- e. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered.

Lacy Diversified Indus. v. Dep't of Local Gov't Fin., 799 N.E.2d 1215, 1221-1222
(Ind. Tax Ct. 2003).

CONCLUSION

20. Petitioner failed to establish a prima facie case that the 2013 and the 2016 assessed values were incorrect. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 and 2016 values should not be changed.

ISSUED: May 31, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.